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ABSTRACT

Based principally on data collected for a broader 11-city study of civic capacity in urban education, this report provides an account of the durability of judicially supervised consent decrees in the school reform arena and explains why judicial intervention may be sought and sustained in the 1990s, often in the absence of evidence that schools are able to achieve a court's explicit reform objectives. A central conclusion is that court-supervised change may offer politically powerful benefits to client groups and school leaders alike and may address some of the most critical collective action problems facing education stakeholders in the urban setting. The court-supervised process in San Francisco (California) is observed to: (1) increase the amount of politically relevant information available in the public domain about school practices and outcomes; (2) create incentives for client-group coalition building on controversial, multipolar issues; (3) assist school leaders in the management of institutional change; and (4) serve to create a forum for the making of credible, enforceable commitments among stakeholders with disparate interests who have often expressed mutual distrust. (Contains 17 references and 32 footnotes.) (Author/SLD)

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The Politics of Education in Court - Ordered School Districts

A Case Study

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ABSTRACT

This is a study of the politics of education in a large urban school district operating under a court-supervised school reform consent decree. Based principally on data collected for a broader eleven-city study of civic capacity in urban education, this dissertation provides an account of the durability of judicially supervised consent decrees in the school reform arena and explains why judicial intervention may be sought and sustained in the 1990's, often in the absence of evidence that schools are able to achieve a court's explicit reform objectives. A central conclusion is that court-supervised change may offer politically powerful benefits to client groups and school leaders alike and may address some of the most critical collective action problems facing education stakeholders in the urban setting. The court-supervised process in San Francisco is observed to (1) increase the amount of politically relevant information available in the public domain about school practices and outcomes; (2) creates incentives for client-group coalition building on controversial, multi-polar issues; (3) assists school leaders in the management of institutional change; (4) and serves to create a forum for the making of credible, enforceable commitments among stakeholders with disparate interests who have often expressed mutual mistrust.

Why do court-ordered school desegregation plans remain under judicial supervision for decades? Nearly one-half of the 20 largest school districts in the nation are operating under court-supervised school reform plans for desegregation purposes. The length of time that these plans remain, at least nominally, under court supervision can range from a "short" 18 years, in San Francisco for example, to longer than 40 years in the Dallas case. These plans have survived Reagan administration efforts to return schools in court-ordered districts back to local control (Orfield, 1996) and endure despite recent Supreme Court decisions that appear to undermine the legal authority under which many local courts maintain supervisory jurisdiction.[1] The lengthy duration of these court-ordered plans would seem to impose a heavy burden on school officials given that the modern desegregation order often touches on almost every aspect of public school administration and reform, including student and teacher assignment, curricular design, professional development, and parental involvement. Have the courts become powerbrokers -- usurping administrative and legislative roles? If so, why haven't local legislators (school boards) and administrators (school superintendents) fought harder to protect their prerogatives?

Evidence from San Francisco suggests, that the norm of party-controlled litigation, and the technical ambiguity involved in school reform, work together to leave courts with little choice but to take their cues about the efficacy of judicial involvement from the

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[1] See, Board of Education of Oklahoma v. Dowell, 498 U.S. 237 (1991); Freeman v. Pitts, 503 U.S. 467 (1992); Missouri v. Jenkins 115 S.Ct. 2038 (1995). In all three cases the Supreme Court acted to liberalize the rules under which local school districts could be declared unitary and thus released from judicial supervision of school administration.

original parties to the litigation. Not surprisingly, that plaintiffs and the interests they represent, will remain invested in judicial involvement so long as they continue to perceive that they can leverage the court order to (a) advance minority advocacy, (b) increase the amount of information about schools performance that is publicly available, (c) secure enforceable agreements from school officials, and (d) shelter vulnerable policies from political reversal. Moreover, there is also evidence that school leaders may also get substantial benefits from acquiescing to judicial involvement. The school board and superintendent in this study have found ways to co-opt the court-ordered regime and to actively use it to secure new financial resources and to solve important political and administrative problems. In this posture, school leaders may stand more to gain from acquiescing to judicial involvement than from fighting for greater autonomy.

The Case Study

Background of the Study

This case study is based, in part, on data collected for a broader concurrent study of civic capacity in urban education[2] that explored the experience of public school governance and policymaking in eleven large American cities.[3] The central goals of this larger project were to map out the political coalitions that provide the framework for local education policymaking, and to examine the different types of civic governance arrangements that emerged from different political environments. Several of the cities we studied were operating under court-supervised desegregation plans and one clear pattern emerged in studies of communities operating, at least nominally, under such plans.

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[2] The Civic Capacity and Urban Education Project was led by Clarence Stone (University of Maryland - College Park) and was funded by the Education and Human Resources Directorate of the National Science Foundation, Grant # RED-9350139 (1993).

[3] The eleven cities were Atlanta, Baltimore, Boston, Denver, Detroit, Houston, Los Angeles, Pittsburgh, Saint Louis, San Francisco, and Washington. The Principal investigator for the San Francisco team was Luis R. Fraga, (Stanford University).

Investigators often described the early phase of judicial involvement in school reform as having a profound impact on school district policymaking. However, they generally found that as court-ordered plans matured and stretched into the 1980's they either became relatively invisible to policymakers, or key elements of the plans were actively co-opted by school administrators.[4] This pattern was also found by investigators working independently on the subject of court intervention in public schooling (Shoenberger, 1990; Tractenberg, 1990). School administrators were seen to be either oblivious to the judicial presence or to be working quietly in a cooperative posture within the court-ordered regime (*cf.* Diver, 1979, pp.84-86).

Clearly much had changed since the mid-1970's and early 1980's when most of these court-supervised plans were first entered. Many desegregation cases, including those in San Francisco, San Jose, Oakland, St. Louis, Dallas, and Boston, to name a few, had shifted emphasis from a narrow focus on student and teacher assignment to become broad-ranging school reform cases. Moreover, the rancorous relationships between school officials and courts that typified early desegregation litigation were largely gone. Large majorities in all regions of the country came to embrace the general goal of desegregated schooling but, as Jennifer Hocheschild has noted, "few whites and increasingly fewer blacks, [would] tolerate transfers of students merely in order to balance the races in schools." Reforms designed to "improve the educational outcomes and daily

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[4] See, e.g., Fraga, Luis R., Bari Anhalt Erlichson, and Sandy Lee, (forthcoming, 1998) "Consensus Building and School Reform: The Role of the Courts in San Francisco," in Stone, ed., Changing Urban Education, (Lawrence, KS: University Press of Kansas); Anhalt, Bari E., Luis R. Fraga and Jorge Ruiz-de-Velasco, (1984) "More Politics than Policy Making: School Reform in San Francisco," Prepared for presentation at the annual meeting of the Urban Affairs Association, New Orleans, LA, March 3-5, 1994; Portz, John (1994), "The Politics of Education Reform in Boston," Prepared for presentation at the Annual Meeting of the Urban Affairs Association, New Orleans, LA, March 3-5, 1994; Stein, Lana (1994), "The Chances for Educational Reform in St. Louis," Prepared for presentation at the Annual Meeting of the Urban Affairs Association, New Orleans, LA, March 3-5, 1994.

enjoyment of public schooling" were demanded by public school advocates and became central to successful desegregation plans.[5]

The logic of judicial intervention would suggest that once legal rights were clarified -- and that as the courts, the public, and local political leaders grew more consonant in their school reform goals and efforts -- a return to full democratic control of the schools would naturally follow. Yet, the observed pattern has been to the contrary. None of the large court-ordered systems we examined were working actively to be released from court supervision. There have been several theoretical explanations for this phenomena. Some observers have argued that continued court intervention is *constitutionally required* because the vast majority of urban school districts have failed to meet their stated desegregation goals or to design effective programs to improve minority student outcomes (Orfield, 1996). Others argue that continued involvement is *necessary* (if not always effective) because, absent outside advocacy by the courts local political leaders, even in minority dominated local political systems, will lack incentives to address the concerns of poor and minority client groups (Tractenberg, 1992). Still others ascribe local political ambivalence to court intervention to the fact that many court-ordered school districts receive additional *financial resources* from state and federal authorities by virtue of their court-ordered status (Fraga, *et. al*, 1998). Yet, another explanation for the length of court involvement may lie in the *technical ambiguity* that is involved in measuring school performance and in designing effective remediation programs (Horowitz, R, 1994). Change in such institutional settings progresses through a torturously slow process of experimental trial and error.

Each of the foregoing hypotheses are certainly plausible and none mutually exclusive. Still, no study has made this question a central object of inquiry: why do court supervised plans persist despite growing evidence that school officials and majorities of

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[5] Hocheschild, Jennifer (1997), "Is School Desegregation Still a Viable Policy Option?" 30 Political Science and Politics 458, at 459, 463 (1997).

the public have long embraced the fundamental goals embedded in those plans? The in-depth case study is well suited to this inquiry where the ultimate goal is the discovery and description of underlying governing processes and the generation of hypothesis that can later be tested on a wider scale.[6] The focus throughout is on the long term impact of judicial intervention on local decision-making. This study explores local education policymaking routines in San Francisco from 1993 to 1997, more than a decade after a consent-decree is entered in the relevant 1981 San Francisco case. The aim is to describe how, and to what extent a mature court-ordered regime may structure the political, economic, and organizational incentives for stakeholders in school governance.

Methods and Data

Data for this study is drawn from three principal sources. The first is a set of structured interviews conducted in 1984-1985 with (1) nine administrators for the San Francisco Unified School District (District), including the school Superintendent, the Assistant Superintendent for instruction, several District program administrators, and two school principals); (2) two members of the District school board; (3) four legal representatives for the plaintiff class in the desegregation suit (including representatives from each of the major litigant groups -- African American, Latino, and Chinese); (4) six representatives of community education advocacy organizations; (5) four university and private foundation representatives who work cooperatively with the school system on school reform and professional development issues; (7) the president of the local PTA; (8) the president of the primary local teacher's union; (9) a member of the board of supervisors (city council); and (10) four individuals, who either worked directly in the mayors office or were city agency heads, each charged with public school advocacy or

[6] See, Merriam, Sharan B. (1988), Case Study Research in Education: A Qualitative Approach (San Francisco: Jossey-Bass Publishers); also, Yin, R.K. (1984), Case Study Research: Design and Methods, Newbury Park, CA: Sage).

school reform projects. Each interview followed a standard protocol, was taped, and was transcribed verbatim. Except for the legal representatives of the plaintiff class and school administrators specifically charged with monitoring legal compliance with the desegregation plan, none of the respondents were asked to comment directly on court involvement in school policymaking or about the influence of the consent decree in that regard. Instead, respondents were generally asked more open ended questions designed to elicit their own understanding of who (or what) is politically important in school politics and in what ways. Additionally, each respondent was asked questions about what they understood to be the concerns and policy views of the key players they identified, about their own policy concerns and views, and about what they understood of the grounds and sources of cooperation and conflict among major stakeholders in San Francisco's public schools. Respondents from the legal advocacy groups who were involved in the design or maintenance of the court-ordered school reform plan were asked more direct questions about their relationships with school administrators, the court, and with other advocacy groups in the city. They were also asked to comment on the sources of information that that bore most heavily in influencing their policy preferences and legal-political strategies.

A second major source of information were the local Federal District Court's set of public documents connected with the judical action in NAACP v. San Francisco Unified School District.[7] These included court opinions, pleadings and exhibits submitted by litigants and Amicus, documents prepared by the court-appointed monitoring committees, the consent-order itself and subsequent modifications. Other relevant public documents reviewed included the school district's annual budgets for the period of the study.

Finally, a newspaper article review was conducted of every printed news account published in The San Francisco Chronicle and The San Francisco Examiner on controversial school reform issues in the period from 1993 to March 1998. These news

[7] 576 F. Supp. 34 (1983).

accounts were used to derive a measure of what school reform issues became controversial during the study period and to follow position-taking by the Superintendent, the School Board, the litigant groups, and other stakeholders on those issues. This news monitoring was critical to an analysis of the process of policy formulation, implementation, and reformulation in response to new information, policy-oriented learning, and the development of shared understandings over the four-year period of the study among repeat players in the policy making system.[8]

The Courts and San Francisco School Politics

A Brief Overview

San Francisco today enjoys a reputation as host community to a rich and broadly diverse mix of racial, ethnic, and cultural groups. Indeed, today's San Francisco bears little resemblance to the San Francisco of the 1950's when the city's population was approximately 90 percent white and largely uni-cultural. David Kirp has written that throughout the 1950's and early 60's San Francisco maintained a reputation for public school excellence which "epitomized the then-prevalent civic virtues" of professionalism and "detachment from politics (Kirp, 1982)." Although already experiencing residential and educational segregation similar to that in other large American cities, the small number of minorities in San Francisco assured that racial and ethnic politics did not figure prominently in city or school politics. But successive waves of minority immigration to the city subsequently changed San Francisco's demographic landscape dramatically. By 1980, the proportion of whites in the city's population had shrunk to less than 60 percent and the number of African-Americans had grown significantly to comprised the single

[8] Paul Sabatier has emphasized the importance of information and learning in understanding the workings of a policy sub-system. The policy process should, he has argued, be observed over a period that includes a series of "policy cycles." See, Sabatier, Paul A. (1993), "Policy Change over a Decade or More," in Sabatier and Jenkins-Smith, eds., Policy Change and Learning: An Advocacy Coalition Approach, (San Francisco: Westview Press).

largest minority group at about 15 percent of the population. Through the 1970s and into the 80s Chinese, Filipino, Mexican and Central American immigrants increasingly came to call San Francisco home so that by 1990, non-Hispanic whites accounted for only 54 percent of the population. Asian-Americans had grown to account for 33 percent, and Latinos for 13 percent of the population. The African-American share of the population had declined to about 12 percent. Chinese-Americans, representing 18 percent of the population had become the single largest ethnic group in the city.[9]

Along with these changes in the racial-ethnic distribution of the city's population came other politically relevant demographic changes. A general out-migration of San Francisco's middle class during the 70's and 80's was coupled by bifurcated job growth in the high end (professional and technical) and lowest end (service and retail) of the income spectrum. The result was a pattern of growing disparity in income between the richest and poorest members of the population during that period. The dominant role of services and retail job growth meant that, by 1986, low (< $24,000) and very-low (< $14,000) annual income households were among the fastest growing segments of the population accounting for almost 65 percent of San Francisco's tax base.[10]

Consequently, as the racial and ethnic diversity of the city grew, so too did the number of individuals in or near poverty, further complicating the ability of the city to deliver essential services and to make distributional decisions related to the competing demands for neighborhood investment and business sector growth (de Leon, 1992). This growing ethnic and socio-economic hyperpluralism so fragmented the political sorting process and complicated coalition-building that, for most of 1970's and 80s, no organized

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[9] These data are drawn from the 1990 and 1980 Census of Population, Volume 1, Part 6, "Characteristics of Population, California," published by the U.S. Department of Commerce, Bureau of the Census.

[10] Munroe, Tapan, et. al., (1992) "Equity and Distributional Aspects of the Bay Area Economy," in Morris, Betsy, ed., Report on the Future of the San Francisco Bay Area Economy, Working Paper 575 (Berkeley, CA: University of California, Department of City and Regional Planning).

group or leader was successful at mounting a stable governing coalition or of projecting a sustained policy vision on some of the city's most pressing social problems. Reflecting on the tumultuous 70's and 80's city mayor and former state assemblyman from San Francisco Willie Brown lamented: "One thing I have learned about San Francisco -- this is a city committed religiously to process, -- very little to results."[11] In many ways, San Francisco had become the classic "ungovernable city" often characterized by a political free-for-all in which multiple groups and coalitions compete with one another in a shifting and unstable number of permutations and combinations (See, Yates, 1978: p.34).

School politics throughout this period fully reflected the hyperpluralism that characterized ambient city politics. As early as 1962, civil rights groups began to press the school board to recognize the increasingly segregated nature of San Francisco schools and to acknowledge that schools in predominantly black neighborhoods were educationally inferior to others in the city (Kirp, 1982: pp.84-85). But opposition from white and Asian neighborhood groups to school desegregation plans discouraged decisive action by school leaders ultimately forcing the civil rights groups to turn to the courts for action. In 1969, the national and local chapters of the NAACP filed the first of three successive lawsuits seeking to force the desegregation and reform of San Francisco public schools. That first case culminated in a finding of racial discrimination against the school district in 1971.[12] Three years later, in 1974, the school board lost another high profile battle against Chinese-American parents who had long claimed that the school district was ignoring the special needs of their children. The Supreme Court found, in the landmark Lau v. Nichols case, that San Francisco school officials violated Title VI of the Civil Rights Act of 1964 by failing to respond to the needs of language minority children whose English language deficiencies hindered their effective participation in the District's instructional programs.

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[11] King, John. "Everything's Coming Up Roses, Brown Assures S.F." The San Francisco Chronicle, October 16, 1996, p.A-13.

[12] Johnson v. San Francisco Unified School District, 339 F. Supp. 1315 (N.D. Cal.,1971).

While other groups periodically pressed school officials for reform throughout the 1970's and 80's, the NAACP yet remained the District's most persistent adversary in court. In 1983, the NAACP finally prevailed on the District to enter into a court-supervised agreement that would eventually form the framework within which the school district's policymaking on almost all issues touching on race and ethnicity would be made in the two decades to follow.[13]

The Consent Decree

The original court-ordered plan that state and local school officials voluntarily agreed to implement in 1983 was unremarkable insofar as its structure and central elements were already common to many other urban school desegregation plans of the period. First, the plan called for a set of clear and quantifiable staff and student racial balance goals at each school to be achieved through a flexible mix of assignment practices, attendance zone changes, and the introduction of magnet or alternative programs at the school district's discretion. Busing was not ordered by the court but the District committed to providing transportation to students "as necessary" to achieve the court-ordered racial balance objectives. State school officials, who had been named as co-defendants, committed to making an independent annual progress evaluation of the District's plan implementation and agreed that under State law, the State was required to reimburse the school District for extra-ordinary costs incurred in complying with the court-order.

A second component of the plan included broad promises by the District to re-evaluate and modify a variety of policies and practices including those related to student

[13] San Francisco NAACP v. San Francisco Unified School District, 576 F. Supp. 34 (N.D. Cal., 1983). As noted previously, the NAACP had been successful in its previous two legal challenges to the school district, Johnson, supra., and O'Neil v. San Francisco Unified School District, (unpublished, Civil Action No. C-72-0808-RFP, N.D. Cal., May 5, 1972). Yet, disagreements between the NAACP's local and national offices on remedial issues prevented them from translating their victories in the court into concrete school reform. In the third case, San Francisco NAACP, supra., the national NAACP took the lead and asserted firm control over both the litigation and the negotiations over remedial plans.

discipline, extra-curricular activities, staff development, and program site selection, to assure "fairness," "equal opportunity," and conformance with desegregation objectives. The school district also agreed to make "continued and accelerated efforts to achieve academic excellence throughout the [District]."[14] But school officials retained broad discretion in program design and administration with respect to these more inherently ambiguous qualitative goals.

Like most desegregation plans, the San Francisco plan generally left most resource allocation questions largely to the discretion of local school leaders. The court did not order any inputs with specific budget implications except with respect to four specifically named schools in the racially isolated area of Bayview-Hunters Point. These schools had long been the focus of disputes between the District and the local NAACP. The school district committed to making major program enhancements and changes at these schools and to embark on a public relations campaign aimed at improving the public perception of the schools and neighborhoods in that area of the city.

One final element in the original plan, typical of other desegregation plans, was a series of information monitoring provisions intended to make it much easier for the court, the plaintiffs, and the public to have regular access to desegregation data disaggregated by schools and classrooms and academic achievement data, including standardized test scores, disaggregated by race and ethnicity. The District also promised to take new measures to improve parent, student, and community access to information and participation in developing desegregation and school improvement programs.

Yet, the initial consent order was pathbreaking in one respect. The Court authorized what was at that time a radical, albeit small scale, experiment with total school reconstitution at the four schools in the Bayview-Hunters Point neighborhood. In addition to the implementation of specially designed programs, each of these schools was to be

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[14] San Francisco NAACP, 576 F. Supp., at pp. 54-58

completely emptied of students and staff (including the custodians) and be "reconstituted" according to a staff and student selection process negotiated by the District with the NAACP. The usual teacher seniority and union-negotiated provisions for teacher assignment would be set aside at schools reconstituted pursuant to the desegregation agreement. The school reconstitution element of the plan had no apparent fore-runner in the literature on school desegregation.

In the period from 1983 to 1991 the District pursued a steady, if often grudging implementation of the plan (Fraga, 1998). Still, the parties to the suit rarely sought out the Court's intervention, usually settling their differences by negotiation. During this period, school officials agreed to expand the number of schools that would receive targeted assistance but school superintendents during this period were generally loath to use the same whole-school reconstitution techniques that had characterized school reform at the Bayview-Hunter's point schools. In 1991, after eight years of relatively quite plan implementation, the Court directed the parties to nominate a committee of experts that would report on the District's progress under the consent decree. That committee reported to the Court in 1992, that the District had substantially achieved its staff and student racial balance goals but that the consent plan's educational improvement component had met with only limited success.[15] Specifically, the Court's committee of experts reported that minority student achievement in schools which had undergone whole-school reconstitution surpassed achievement in schools that received targeted assistance but had not been reconstituted. Clearly influenced by the mounds of new data on minority student achievement generated by the court-order, the committee's report recommended that the next phase of plan implementation should focus on broad-based

[15] Orfield, Gary (1992), "Desegregation and Educational Change in San Francisco" (Findings and Recommendations of the Committee of Experts, submitted to Judge William H. Orrick, U.S. District Court, Northern District of California, filed in Civ. No. C-78-1445 WHO, July 19, 1992).

school reform dedicated especially to improving the educational outcomes of African-American and Latino students.

Coincident with issuance of the expert's report in the Summer of 1992 was the School Board's hiring of Waldemar Rojas to assume the superintendency. New to San Francisco and anxious to line up powerful allies for his own ambitious reform initiatives, the superintendent quickly embraced the recommendations of the court-appointed committee. He responded to its criticisms by promising to work cooperatively with the NAACP and to submit a comprehensive school improvement plan for court approval. Four months later, the District and the NAACP submitted a joint report to the Court committing the District to a wide-ranging school reform plan that would be incorporated into the existing court-supervised process. In contrast to the vague school improvement provisions in the initial consent decree, the District's leadership now proposed to adopt specific State-developed school and student achievement measures to which the District would agree to be held accountable under a modified consent decree. The proposed plan would also authorize the Superintendent to target low-achieving schools for special assistance and staff development programs. Under the plan the District would develop specific criteria for identifying low performing schools and the Superintendent would be authorized to reconstitute up to three schools per year, pursuant to the consent decree, until the student performance goals were achieved system-wide. This last provision was critical to the new school administration's systemic reform plans. Top-to-bottom whole-school reconstitution, backed by the court-ordered processes, would be the centerpiece of a reform program that would hold teachers, counselors, principals, and other school-site staff accountable for poor student performance.[16]

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[16] "Parties Second Joint Report to the Court Pursuant to The Court's Request at the August 26 & 27, 1992 Status Conference." San Francisco NAACP, Civil Action No. C-78-1445-WHO, (United Stated District Court, Northern District of California, filled October 29, 1992).

The superintendent's actions triggered alarms among community leaders and teacher's unions who keenly perceived that, if approved by the court, a wide array of school reform measures aimed at African-American and Latino students would be shielded from the normal political process and brought under the Court's protection. The teachers unions were particularly alarmed that the new plan would give the Superintendent too much power to circumvent the internal bargaining process with respect to management and teaching conditions. The unions and a broad coalition of Latino and Asian groups quickly filed motions to intervene in the desegregation suit and requested a bewildering array of plan modifications. Meanwhile the School Board deferred to its new Superintendent and sought to remain neutral in the contentious court battle that ensued among the ethnic group leaders, the teachers unions, and the NAACP over control of the litigation. The court responded by rebuffing the teachers unions and expressing faith in the NAACP's capacity to act as a competent fiduciary for all the community groups. It accepted, without modification, the plan jointly proffered by the NAACP and the school superintendent.[17] By 1993, the school district's desegregation consent decree had grown to encompass wide-ranging school reform.

Increasing Racial, Cultural, and Class Diversity

The period between 1980 and the present has been characterized by increasing demographic diversity of the city and the school district along every politically-relevant dimension. As previously noted, the ethnic-racial distribution city-wide in 1990 was 54 percent for non-Hispanic whites, 33 percent for Asian-Americans, 13 percent for Latinos and 12 percent for African-Americans. But the enrollment in the city schools was much more radically skewed toward a majority-minority client base. Only 14 percent of students in the school district were white in 1990, while the enrollment of Asian-Americans, Latinos and African Americans exceeded the city-wide norms at 47 percent.

[17] MEMORANDUM DECISION AND ORDER. Civil Action No. C-78-1445-WHO. (United States District Court, Northern District t of California, entered, July 22, 1993).

20 percent, and 14 percent of school enrollment respectively. Moreover, the school district reported in 1990 that 24 percent of its enrollment came from families living below the poverty line and participating the federal Aid to Families with Dependent Children program. Another 27 percent of the school district's students were classified as Limited English Proficient in 1990. Clearly, the school district's principal clients are, in relation to San Francisco as a whole, disproportionally minority, disproportionally poor, and from families newly arrived in the United States. As I elaborate later in this paper, respondents for this study suggest that education policymaking in San Francisco is complicated not only by (1) hyperpluralism among its principal client groups, but also by (2) a perceived diversity of interests that manifest between its majority-minority clients, an overwhelmingly white and relatively senior teaching staff,[18] and (3) by real and perceived differences in the policy preferences of the districts predominantly minority and poor client base and a predominantly white and more economically wealthy electorate. Throughout the period of study, the school board grappled, with uneven success, at crafting stable effective policy on such issues as student and staff integration, youth violence, cultural identity and representation in the curricula, neighborhood schooling, admissions to its most competitive "alternative schools," school reconstitution, and bilingual education (Fraga, *et. al.*, 1998).

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[18] At the beginning of this study, for example, (the 1994-95 school year) the district reported that its faculty was 61% white, 11% Chinese, 10% Black, and 8% Hispanic, as reported in Asimov, Nanette, "Big Man on Campus: Superintendent Bill Rojas Talks About Violence, School Closures, Test Scores, and Why He Wouldn't Hesitate to Enroll His Son in Public Schools." The San Francisco Chronicle, March 19, 1995, p.1/Z1. In addition to being predominantly white, the School District's faculty is also remarkably senior. Even as late as the 1996-97 school year, after the District had launched an ambitious class size reduction program prompting a substantial number of new faculty hires, the District still reported that the average years of service was greater than 18 years for Elementary School teachers and about 16 years for Middle and High School teachers. See, SFUSD, "Recommended Budget for Fiscal Year 1997-1998" June, 1997, p.318.

DISCUSSION AND KEY FINDINGS

I. The Court: Activist Powerbroker or Neutral Umpire?

School desegregation cases place a trial judge at the center of a controversy over the reform of a large complex public institution. In one influential critique of such cases, Colin Diver argued that the broad discretion accorded to trial judges in fashioning remedies and supervising implementation of court-ordered reform inappropriately allowed judges to act as "powerbrokers." The court's remedial authority to initiate policy solutions for public problems involved the courts too much in the explicitly political function of policy bargaining and management (Diver, 1979). Diver's observations were rooted in a historical moment when local resistance to local busing and other techniques that interrupted a long tradition of neighborhood schooling often forced judges into highly prescriptive roles and into standing in for reluctant legislators. A decade later, however, Bruce Cooper revisited the question of judicial involvement in school and other institutional reform cases and found that courts supervising reform through the consent-decree method generally acted to "mitigate rather than exacerbate [political] conflict (Cooper, 1988)." Although courts in school reform cases were called upon to make hard political calculations they, nevertheless, generally adhered to judicial norms of party-control over the course of long-term consent decree implementation.[19] As the key issues in many cases moved from racial desegregation to questions about how to improve outcomes for minority students, school boards became more acquiescent to judicial involvement and a different, less intrusive, pattern of judicial participation prevailed (Flicker, 1990; Tractenberg, 1990). The judges Cooper surveyed acted in the familiar umpire role rather than as powerbrokers.

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[19] The judicial norm of "party control" requires that the decision to invoke the power of the court should be at the initiation of the litigating parties and that the scope of a remedy for a constitutional violation should be informed the litigants formal requests to the court. This norm would preclude the court from ordering a remedial plan sua sponte except in those cases where the litigating parties could not agree to a resolution (Chayes, 1976).

Yet a fundamental question remained: why would trial judges tend to act as umpires where the scope of discretion might offer opportunities for taking a more activist powerbrokering role? Answering this question seemed critical where we were interested in determining why court-ordered school reform cases have become seemingly endless journeys. Determining why a remedy phase lasts so long in school reform cases requires knowing something about who is calling the shots at this phase of court involvement. In San Francisco the judge in the school desegregation case can best be described as an only occasional umpire in the conciliation process he set in motion. The parties report to the court annually, but the judge has hailed the parties into court on his own motion only once, and then only after the first eight years of implementation. The result of that event was to see the parties jointly ask the court to approve a major expansion of the school reform process covered by the court order. Indeed research in other court-ordered school reform cases generally bears out the basic pattern of party-led case management and minimal judicial participation in the policy bargaining process (See, e.g., Flicker, 1990). A review of the court' experience in the long-running San Francisco school desegregation case, suggests two forces that strongly militate toward party control of school reform under the court-ordered process: (1) the constraints on effective court participation in policymaking imposed by technical ambiguity surrounding the school reform process; and (2) bargaining advantages that accrue to the parties from out-of-court settlement of disputes.

A. School Reform and Technical Ambiguity

The judge in the San Francisco case was not reticent about ordering specific inputs or placing clear quantifiable goals in the consent-decree on issues amenable to bright line remedies. Where racially isolated schools had been historically neglected by school officials, his orders required specific human and capital resource improvements be made. Likewise, where neighborhood school assignment policies resulted in racially isolated

schools, he was comfortable ordering the District to achieve very specific racial balance goals at schools within a time certain. But the goal of improving educational outcomes for a very diverse mix of students in the school district was a much more intractable problem for all the parties, including the court. How should language remediation services be designed and administered? How should new experiments, including whole-school reconstitution, be evaluated for their potential to increase school and staff accountability? What tests and measures might validly be used to evaluate school and student progress over time?

At first blush, these policy disputes might appear to present a challenge to the court's limited expertise. But this court showed great adeptness during the implementation period in bridging key expertise gaps on reform issues by assembling advisory committees or calling on national education experts to expand its capacity to respond.[20] Achieving student outcome goals, on the other hand, presented a different sort of dilemma: the "experts" were themselves at odds on many of the technical issues that governed the relationship between school reform and student outcomes. Expert testimony alone would be insufficient to resolve key school reform issues because the professional experts could not provide the court with a set of authoritative solutions that would command the respect of those with a stake in the outcome.

In the absence of controlling expert or professional authority, the judge in the case viewed mutual agreement among the parties as the only truly efficient solution to the student achievement questions. Indeed, Judge Orrick suggested at various stages of plan implementation that an effective resolution to the case would depend on the development among the litigating parties of a shared set of understandings about the nature of the problem and about the efficacy of specific policy instruments in addressing it. But

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[20] For example, the court's 1983 decision to order specific programmatic inputs at schools in the predominantly black communities was the result of reliance on expert advise. San Francisco NAACP, 576 F. Supp. at p.39.

agreement could not be commanded by the Court. It would require the development of genuine trust among the parties; and it would require an orderly policy bargaining process that fostered a meeting of the minds and the making of credibly enforceable agreements. Such a process would have to supply two elements that were missing in the political and institutional environment in which local education policy was normally made: (1) it would need to incorporate both professional expertise and wide political representation, and (2) it would need to limit the number of bargaining parties with the final authority to make commitments and to move forward with a action plan free of the fragmented multipolarity that plagued the existing decision process.

To this end, the judge fashioned a structured bargaining process that was most likely to foster the agreement that was central to any successful court-ordered plan. Judge Orrick first convened a "committee of experts" to advise the NAACP and the school District on an on-going basis. This committee would also advise the Court and would include national and local education experts as well as representatives selected from among nominees proposed by each of the major racial/ethnic groups in the city. But final bargaining authority would fall to the NAACP and school officials. This structure forced the teachers unions and other bureaucratic interests within the school district to work through the Superintendent to whom the School Board would delegate sole authority to commit the District to action. The teachers union's motions to formally enter the case as intervenors were consistently rebuffed by the court. Likewise the judge allowed different racial/ethnic factions to be represented on the Advisory Committee, but he adamantly refused to grant formal intervention status in the case to minority groups other than the NAACP. The resulting structure forced all the racial/ethnic groups to accept the NAACP's fiduciary role in the litigation and to work through its offices (or through the advisory committee of experts) to influence final agreements and the implementation of the consent decree. Only the NAACP was granted authority to commit the plaintiff class to a final plan. The judge thus made it clear that the technical ambiguity surrounding

school reform and minority education was so vulnerable to multi-polar political acrimony that efficient policymaking could be advanced only by forcing all disparate political factions to work through one of the named parties to the suit.

While Judge Orrick's specific response to technical ambiguity may be case-specific, the ambiguity itself is something that would inhere to any case where the object is to improve student outcomes. The disarray among "experts," professionals, and politicians on the question of how best to improve minority student outcomes is a major constraint on any judge who might be disposed to seek an active policymaking role. Where, as here, the parties are locked into an on-going relationship that demands trust and shared understandings, a judge will be compelled to look to the parties for a solution. This is so because the very goal the court seeks to achieve is ineluctably dependent upon the quality of the relationship between the litigating parties. To be effective a judge must let the parties take the lead in defining the scope of the remedy.

B. Party Interests in Minimizing Court Involvement in Policymaking

A judge's opportunity to act as a powerbroker and to determine the course and scope of policy decisions in a case is directly proportional to the number of opportunities he or she has to mediate disputes brought to him by the parties. For their part, each of the litigating parties will act strategically to maximize their gains from any bargaining process and will have little incentive to bargain in good faith if they believe they stand more to gain by taking the matter directly to the judge and letting him decide. But the structure of conflict over minority student achievement is that neither party can count on optimizing its gains if the matter goes to court for a decision. This is so because the object of reform is not a set of arrangements amenable to a one-time solution. Instead it is an on-going relationship among repeat players who, like partners in a marriage, must live with each other after a resolution in ordered.[21] The only optimal strategy for the litigants

[21] This is particularly true where the litigants are the poorest public school clients and so not well-positioned to exercise a theoretical "exit option" in conflict with the school district.

then is one where everyone perceives that they have won something of value from the engagement. If the school district "wins" outright, it is likely to buy itself unending grief from a client group with the organizational and financial resources to take the battle elsewhere or to be disruptive and uncooperative in future conflicts. If only the NAACP "wins," on the other hand, it may find that it gains little from a formal victory over a reluctant institution disposed to make only cosmetic changes in an environment in which its dilatory actions are notoriously difficult to monitor and measure.

Consequently, the strongest incentives in the environment militate toward mutual conciliation. The chief impediment to such conciliation is a fragmented and multi-polar political environment that local political leaders have been unable to order and in which no coalition is sufficiently powerful to prevail consistently but numerous groups have just enough influence to block adverse action. Once the judge solves the political ordering problem by structuring negotiation to enable credible and enforceable agreements, the natural incentives set the stage for productive, good-faith negotiation among the parties privileged to make commitments under the court-ordered system. One measure of the preference for out-of-court conciliation is the absence in the last 8 years of the parties ue of the formal contempt process to hail each other into court. Ironically, the virtue of the court-ordered conciliation structure is that it works to minimize judicial involvement in the policymaking process in the long run.

In sum, a judge's ability to act as a policymaker and powerbroker in school reform cases is strongly circumscribed by the technical ambiguities associated with the object of reform and by the strong incentives for conciliation that inhere in the on-going relationship between the defendant and the plaintiff class. Both forces combine to dictate that the parties to the case will take the lead in defining the scope and pace of reform under the court-ordered process.

II. The Litigants: Invested in the Court-Ordered Process

Where the scope and pace of institutional reform under a court-ordered consent decree is party-led and proceeds uninterrupted for decades, you should find one of two conceivable patterns of party engagement. Either the plaintiff party has been successful at convincing the court that judicial supervision continues to be legally required (over the plaintiffs objections), or both parties simply continue to operate under the consent decree without bothering to challenge the legality of the court's continued jurisdiction. One might expect that the former would be the case in most instances since school districts can be assumed to desire managerial independence. The San Francisco case, however, conforms to the second scenario. Both the plaintiff class and the defendant school district find the court's involvement to be mutually advantageous. I find that it does so for reasons in the political environment in which school district policymaking must operate. Moreover, the relevant elements of the political environment that encourage mutual party investment in the court-ordered regime are likely to be found in most urban environments and may help to explain the longevity of court-ordered school reform cases in many cities. Attention was given in the study to (1) the interests or beliefs that drive actor behavior and (2) to the way in which the consultative processes set up by the court-ordered regime addresses some of the most critical collective action problems facing school officials and client groups in ethnically and culturally divisive issues.

A. 1 What Drives the Plaintiffs?

Lack of political incorporation and fragmentation among racial ethnic groups. First, there is a strongly held and pervasive belief among racial/ethnic group leaders in San Francisco that school leaders and teachers have few incentives to respond effectively to the diverse needs of language and cultural minority children. Ethnic group leaders report that the costs associated with effective political participation (time, money, and skill) form high barriers to effective advocacy by individual members of their respective groups, who are overwhelmingly poor, and often members of linguistic and cultural minorities. Most

group leaders expressed the belief that absent the court-ordered regime, school district policymaking is subject to bias as the Board and Superintendent have an electoral incentive to respond effectively only to the intensely promoted interests of a small number of middle class parents with the time and resources to monitor school activities and lobby on behalf of their interests. This belief is consistently held among minority group leaders even as minority representation on the board increases. While demands for special services from different groups increases, there is yet no single group or coalition large enough or consistent enough in its positions as to hand the Board a clear mandate for action in any direction on the most controversial social issues. Each group is large enough to make trouble and stop action, when necessary, but none is strong enough to mount a sustained coalition for positive change. In this environment ethnic group leaders believe that elected officials often respond by "studying" the problem, delaying action or taking merely symbolic steps in what school official see as "no-win" political situations.

Information asymmetries between the school bureaucracy and community leaders. Second, ethnic group leaders and community leaders often express frustration with what they perceive to be an insular bureaucracy that, prior to the consent decree, collected and disseminated little politically relevant information about its operations or about student achievement. Absent judicial coercion, leaders reported that it was difficult to get basic information like how many LEP students were enrolled in the district, how many African-American teachers were employed or how student performance indicators (standardized test results, drop-out rates, and disciplinary actions) compared by race and racial/ethnic group in the district. Respondents often cited this lack of basic information as one of the most serious obstacles to understanding the nature of the problems facing the schools and fashioning a reform plan or building reform coalitions.

Trust and differences in the shared understandings of client groups and school professionals. One of the most pervasive tensions in both our interviews and in the coverage of news about school politics was the tendency for school professionals and for

key civil rights and racial/ethnic group leaders to operate from radically different causal theories about student failure. When explaining poor minority student performance, for example, school professionals generally cite the lack of family resources (time and money) and/or lack of parental attention that results in students who arrive at school ill-prepared to learn. This set of causal frameworks explains why teachers and administrators often promote greater school-based social services for poor minority children to compensate for heir family poverty. Teachers and administrators often acknowledge burn-out among colleagues and poor programmatic efforts but staunchly believe that the vast majority of teachers and principals are strongly committed to delivering high quality services to all students. By contrast, ethnic groups leaders explained poor minority student performance in radically different terms: teachers have low expectations of Latino and African-American students; they do not value home languages and cultures; and they do not care or know how to make education seem relevant to minority students. In sum, ethnic group leaders tend to believe that minority students fail because school professionals do not care to respond to diverse student needs. As the leader of the San Francisco NAACP's education committee explains it, the "reality" of public schooling is "that you have a lot of teachers in the district who were never wedded to teaching those [African American and Latino] students. And very few of them live in the city or care about this city."[22]

A. 2 Why do the Minority Groups Remain Invested in the Court-order?

Politically-relevant Information. The consent decree requires the District to compile a comprehensive annual public report detailing its programmatic efforts to achieve system-wide desegregation and to improve student achievement among African-American, Latino and other LEP children.. The District has also agreed to spend a portion of consent decree funds to operate an office of parent/community involvement with the purpose of improving parent, family and community participation in the educational

[22] Asimov, Nanette, "Guardian at the School Gate," The San Francisco Chronicle, November 3, 1996, p.A-3.

process. This office is responsible for informing parents about school programs, policies, and application processes and providing translation services for LEP parents to "empower them to make appropriate decisions." Civil rights leaders and ethnic group representatives report that these requirements have increased the public availability of internal information on school programs and performance. More importantly, the legal requirements have routinized the collection and dissemination of information on minority student achievement. Civil rights respondents report that they rely heavily on these new information sources to learn about the internal workings of the District, including its programmatic and budget priorities. This information has allowed them to better calculate where change needs to happen and where greater advocacy in needed. Some respondents observed that the reporting requirements have also allowed the District to make the competing pressures, demands, and limits under which it operates better understood by the advocacy groups.

Political Incorporation. Without exception, civil rights and minority group leaders say they support the court-ordered processes because they believe it increases their influence on district policymaking in concrete ways. This belief is as true among respondents affiliated with the NAACP who are privileged by the consent decree to participate directly in the consultative process as among leaders from the Asian-American and Latino groups who must channel their individual concerns through the NAACP.[23] The general consensus among minority group leaders is that the court's supervision, the increased public reporting of minority student achievement required by the consent order

[23] At various times Latino and Asian groups have publicly expressed dissatisfaction with the NAACP's management of minority interests under the consent decree. In fact, is was such dissatisfaction with the NAACP's response to the controversy over admissions criteria at Lowell High School that served as a catalyst for the Chinese Democratic Club's challenge to the consent decree in the Ho case. See, Brian Ho v. San Francisco Unified School District, Civil Action No. C-94-2418-WHO (1995). Individual minority group leaders would prefer to be accorded equal bargaining status under consent decree. The point here is only that the minority group leaders, including those within the Chinese community represented by the Chinese for Affirmative Action, have been *sufficiently* satisfied with the NAACP's approach that they have not been willing to challenge the court-ordered process.

and the privileged bargain status accorded to the NAACP under the order all combine to strengthen minority group influence in three broad areas: (1) improving school accountability and focusing school officials on minority student achievement; (2) obtaining a greater commitment from the District to hiring and promoting minority professional staff, and (3) getting school officials to target additional resources (both human and financial) to schools in the troubled , predominantly minority, neighborhoods that are difficult to successfully desegregate.

B. What Interests Drive the Defendant's Attitudes toward Court Intervention?

B.1 School Administrators: Resources and Discretion

School administrators emphasize two forces at work in local administration that define their day-to-day operations and that strongly mediate their attitudes toward judicial intervention in school governance: (1) an operating environment in which internal and external demands for services and resources usually outpace supply; and, (2) a bureaucratic and legal regulatory framework that severely circumscribes operational discretion. From a Superintendent's or program director's point of view, anything that may give him or her more resources or discretion with which to meet the demands on their offices will be welcome. Conversely, any external interference that threatens to limit either will be met with administrative resistance, usually on the ground that it hampers management's ability to promote the core mission of public schooling. Resource acquisition and allocation is at the heart of the manager's job and so it is not surprising that in interviews school administrators emphasize the importance of convincing voters to pass bond elections, and of reaching out to the charitable foundations and non-education agencies for social services and programmatic support, including the U.S. Departments of Commerce, Labor, and Health and Human Services. In San Francisco, successive superintendents have been able to obtain court and NAACP approval of compliance plans

that supply both greater resources and broader discretion than would normally be available without judicial involvement.

Resources. In any given year, reimbursement from the state for carrying out consent decree activities is about 35 million dollars, or about 6% of the school district's annual budget. For fiscal 1997-98, for example, the school district projected that it would pay for 315 teachers and 21 administrators, (about 8% of its professional personnel) with consent decree funds. It is unclear how much of these resources would be lost in the absence of the court order since the state does provide assistance to school districts that are operating voluntary desegregation programs. Nevertheless, administrators have viewed the consent decree as a "cookie jar" and generally assume that, absent the court order, State financial support would *probably* be less. Clearly, state support of consent decree activities would be less reliable from year-to-year, subject as it would be to the state education department's own funding priorities. Pursuant to State statutory law, however, costs associated with a "final court-order" for desegregation are reimbursable by the state.[24]

Discretion. Administrators interviewed for this study suggested that discretion to leverage current human and capital resources in a way that improves school productivity was at least as valuable, and often more important to them, than obtaining more dollars. School administrators frequently mention the principal-agent problem as a central force in their jobs: how can they create incentives for principals and teachers to perform at high levels of productivity and also hold school site personnel accountable for student performance. For the current Superintendent, the threat of school reconstitution and the process of evaluating school performance for reconstitution purposes is central to gaining a foothold on agent performance and accountability. Here, the court ordered process has helped tremendously. The superintendent has capitalized on the NAACP's

[24] 576 F. Supp. 34, at p. 59 (As a signatory to the consent decree, the state agreed that cost associated with the court order would be reimbursable pursuant to the California Education Code, Sections 42243.6 and/or 42249.)

skepticism about the commitment of veteran teachers to minority concerns and on the Court Advisory Committee's endorsement of school reconstitution to bring this reform tool within the Court's protection. Basically, by promising the NAACP to reconstitute schools where minority students perform poorly, and committing to do it as part of his desegregation duties, the Superintendent has gotten the court to agree to order school reconstitution as a matter of law. The consent decree authorizes the Superintendent to reconstitute up to three low-performing schools per year until performance trends for minority students in those school is turned around. In this way, the Superintendent has successfully co-opted the consent decree process and made his own reform agenda central to the court-ordered desegregation plan.

Under the court-ordered reconstitution process, the Superintendent can link principal and teacher assignment and other professional development opportunities to school performance. Normally, these matters would be governed by agreements negotiated among the employee unions, the Superintendent , and the School Board. But under the court-ordered umbrella, the school reconstitution process is taken out of the internal bureaucratic and political policymaking circles and is protected by the Court from its most fierce opponents -- the teacher's unions. Power within the school bureaucracy thus shifts from the School Board arena to the Superintendent who gains a freer hand in dealing with his teachers and principals. Teacher's union leaders complain bitterly that the reconstitution technique not only scapegoats teachers for poor student performance but robs them of any power to bargain for fair treatment of teacher concerns. The Superintendent, by contrast, professes himself to be "enormously enamored" with the consent decree because of the resources it brings, and the political protection and legitimacy it imbues on his own reform initiates.[25]

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[25] Asimov, Nanette, "Big Man on Campus: Superintendent Bill Rojas Talks about Violence, School Closures, Test Scores, and Why He Wouldn't Hesitate to Enroll His Son in Public Schools," The San Francisco Chronicle, March 19, 1995, p.1/Z1.

B.2 The School Board: The Local Conversion Process

On the surface it is most difficult to understand why any elected school board would quietly acquiesce to long-term court intervention in school policymaking.[26] Even where a board is fully supportive of the plaintiff's objectives, one might yet expect it to insist on a plan that would be implemented swiftly and that would assure an equally swift return of local control to the school board in a time certain.[27] School boards function as the essential bridge between the school systems bureaucracy and the clients and communities that it supposed to serve. Individual board members act as negotiators and policy brokers among competing community groups and, as such, serve to convert community demands into concrete policy directions for administrators (Wirt & Kirst, 1997). To the extent, therefore, that a court-ordered process accomplishes part of that political conversion, it arguably supplants the school board. Yet, the School Board in San Francisco, like boards in other court-ordered cities, delegates management of its consent decree to its superintendent and generally does not press the school district's legal team to seek release from court supervision. In essence, the School Board voluntarily trades away part of its policymaking authority by failing to insist on its policybrokering prerogatives. Understanding why an elected board would behave in this manner requires a closer examination of the environment within which it must operate.

Central Tendency. In reviewing consent decree implementation from 1993 to 1997 a great deal of attention was devoted to those education issues that became controversial in San Francisco and that deviated in some way from the routine patterns of policymaking dominated by the School Board and its administration. By-and-large this period could be described as a generally peaceful time for the District. Most decisions

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[26] School members in San Francisco are selected in at-large elections to four year terms.

[27] School board opposition to court-ordered reform might also be expected where, as in San Francisco, the school board has never admitted or acknowledged the allegation of intentional discrimination upon which the desegregation suit was premised. Instead the school board authorized settlement because it generally supported the NAACP's integrative aims.

about how to allocate fiscal and human resources were in fact decided in routine ways with little apparent outside interference by the courts. As noted earlier, consent decree administration drives only about six percent of the school district's budget, and generally does so in programs and initiatives that are widely supported by the School Board. Similarly, questions of curricular policy, programmatic reform, contracts management, and administrative staffing were settled through standard internal channels that were largely invisible and non-controversial to the public or to the client groups. Likewise, as they discussed their day-to-day work on the Board for this study, the consent decree process, now in its second decade, was largely invisible to school board members.

Deviation There were, however, six controversial issues that commanded intense, if somewhat sporadic, public attention and press coverage during this period. These issues were:

(1) demands by Chinese-American groups and others to change or eliminate the court-ordered racial/ethnic quotas at the District's most prestigious high school;
(2) the use of whole-school reconstitution as an accountability tool at schools where the performance of African-American and Latino students is low;
(3) proposed changes to the admissions rules at magnet schools to favor neighborhood residents;
(4) controversy over the District's continued implementation of bilingual education classes for LEP/immigrant children;
(5) proposed curricular changes to require minority-written books to be read in high school English classes;
(6) and demands for School Board action on school violence issues and gang activity;

All of these controversial issues can be brought under the defining rubric of multi-cultural conflict. Except for the controversy over the policy on minority-authored books, each issue also confronted the school board with wrenching demands for the redistribution of scarce human or financial resources that competing factions perceived to be unequally distributed among different racial/ethnic groups. For example, the controversy over racial balance quotas at Lowell High School is a classic case of interest group conflict over a

scarce resource. While initially supportive of the racial balance quotas, many parents in the Chinese community came to view them as unfair in light of their growing numbers in the District. As the quota system began to limit Chinese access to Lowell, opposition in the Chinese community to the selection system began to grow, pitting them against African-American and Latino leaders who insisted that without the quotas their children would be under-represented in the District's best program. The controversies over neighborhood schooling and school responses to gang activity also segmented along clearly discernible racial/ethnic lines but were made more multi-polar as different solutions were also perceived by some groups to favor the interests of middle class families over those of families who lived in poor, distressed neighborhoods.[28] The controversies over bilingual education, minority representation in the curriculum, and school reconstitution, on the other hand, were as much about conflicts between client groups and school professionals as about inter-ethnic competition. These conflicts expose deeply held opposing views among parents and educators about the importance of cultural representation in the curriculum, about the way that schools ought to value home languages and accommodate different styles of assimilation and acculturation. Even teachers who strongly support bilingual education, minority representation in the curriculum, and other efforts to improve minority student achievement often expressed the view that parents ought to trust teachers to care about all their students and to make basic professional decisions about core teaching and learning issues. Teacher's groups were particularly frustrated by the NAACP's staunch support of the superintendent's school reconstitution program and took issue with the idea that teachers could not be trusted to hold minority students to high standards and to foster their success.

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[28] For example, the local NAACP came to oppose the proposals to allow neighborhood priority in assignment to magnet schools in relatively wealthy neighborhoods because they would principally favor middle-class minority families living in those neighborhoods at the expense of minority children who lived in poorer neighborhoods.

Under normal circumstances, these are some of the most difficult issues for any school board to address -- no matter what position is taken, there will be some group that will walk away from the conflict feeling that the Board settled the matter in some racially insensitive way if not in an outright racist manner. Board members interviewed for this study generally described hyperpluralizm among racial/ethnic groups and other stakeholders in San Francisco schools as both a gift and a curse. They lamented the lack of communication among the groups and the fact that coalitions have to be built on an issue-by-issue basis and on terms that shift quickly over time. This problem was all the more tricky as board members in San Francisco are selected in at-large elections that required individual board members to draw on support from voters city-wide. In this environment, one Board member emphasized how important it was to maintain good relationships and remain "accessible" to all major groups. It was electorally risky for any individual board member to stake out positions that alienated any one group. It was clear, even among minority group Board members, that there was as yet no leader or over-arching set of commonly held beliefs on which a governing coalition can be fashioned to address some of the most controversial issues that touch on race and ethnicity. Fortunately, the Board has been able to look to the desegregation court-order for political cover on the most culturally divisive and politically intractable problems confronting the District.

Political Cover. Ultimately only the controversies concerning the inclusion of minority-written texts in the high school curricula, and over gang-related school violence, were settled by the School Board acting under its own authority. The other culturally divisive matters were handled by the Superintendent and the NAACP negotiating quietly through the court-ordered process and outside the school board's political arena. Although competing factions took their complaints to the Board, it was able to pass these hot potatoes on to the Superintendent whose duty it was to negotiate all matters arguably "covered by the court-order." While the Board would eventually have to

ratify the Superintendent's decisions, it was much easier in each case to approve a plan that had already been vetted by the Superintendent and that had the backing of the NAACP. Such a solution could be presented to the public as "required" by the court-order.

The over all policymaking picture, from the Boards point of view, is that the consent decree is largely invisible with respect to the issues that dominate the vast majority of its time and energies. This is in keeping with other studies which have found that policymaking functions are often eclipsed by the administrative and adjudicatory functions that modern School Boards are expected to perform (Danzberger, 1992). But on the most controversial matters the Board has found the consent-decree useful in providing political cover and in ordering the resolution process.

C. Mutual Benefits of a Continued Investment in the Court-Ordered Regime: Political Ordering and Policy Sheltering

Thus far, analysis has focused on the different lenses through which minority group and school leaders see the court-ordered regime and the largely incommensurate benefits that it provides to each. But there are other, politically powerful benefits that it provides to stakeholders in more mutual ways. The consent decree's incorporation of a standing committee of advisors to the parties, and its framework of consultation and negotiation on covered matters, greatly contributes to both the rationalization and ordering of the political environment and the policymaking process. The consent decree also provides a stable mechanism for sheltering controversial policies from political attack once an accommodation is reached between the principal players -- the Superintendent and the NAACP.

Political Ordering. As noted previously, Judge Orrick was clearly conscious of the fractious nature of the interests and stakeholders involved in school policymaking. He consequently sought a consultative framework that incorporated both professional expertise and political representation but that would also lead to an *efficient* resolution of

policy disputes. This meant giving each major group, including the teachers, education professionals and the major ethnic group leaders some avenue for voicing their concerns. It also meant limiting the number of parties who could bind the school district and the disparate minority groups to a plan of action. By limiting the number of signatories necessary for a binding agreement, the process also limited the number of veto points that any given plan would have to survive. Thus, the teachers unions and the Latino and Asian civil rights groups were denied equal status with the NAACP and Superintendent in the bargaining process. To affect policies subject to the court order, these groups, otherwise powerful in their own right, were forced to work through the offices of the Superintendent, the NAACP or the court-appointed, multi-ethnic Advisory Committee. Only the NAACP and the Superintendent were authorized to bind the other groups to specific agreements in their respective capacities as fiduciaries. The implicit assumption here is that the Superintendent would have adequate incentive to protect teacher interests and bargain in good faith on their behalf. Likewise, the court expressed faith in the NAACP's capacity to adequately and fairly represent all minority interests in its negotiations with the school board.[29]

By backing up the final agreements negotiated between he NAACP and the Superintendent, the consent decree addresses the most critical collective action problems facing the Board and the disparate client groups: (1) it creates incentives for client-group coalition building on controversial, multi-polar issues, (2) it assists the Superintendent in the management of change by strengthening his discretion to impose order on his own bureaucracy, and (3) serves to create a forum for the making of credible, enforceable commitments among disparate parties who have frequently expressed public distrust of each other. One prominent example of this more efficient process is the relative ease with which the Superintendent has been able to negotiate the opening and closing of schools in the predominately black neighborhoods in the Southeast portion of the city.

[29] San Francisco NAACP, 576 F. Supp. at p.50.

Administrators acknowledged that school closings are especially hard fought by neighborhood groups. But once the NAACP forged an agreement with the Superintendent on these issues, it helped both the Superintendent and the Board by imbuing the District's actions with legitimacy and taking the political heat from dissenting neighborhood groups. Likewise, the multi-polar controversy over neighborhood access to open-enrollment magnet schools was brokered by the NAACP and the Superintendent each acting with an interest in securing a compromise that most minority and middle-class parents could accept.

Policy Sheltering. Finally, and perhaps most obviously, the consent decree insulates politically vulnerable policies forged through its consultative processes from collateral attack by hostile parties. Both the Board and the Superintendent are protected from the generally powerful teachers unions on the school reconstitution issue because they can emphasize at critical junctures that the technique is required by the court-imposed process and the NAACP frequently makes public gestures of support of the Superintendent whenever he experiences political heat from the teachers on reconstitution.[30]

Likewise, the admissions quotas at Lowell were also protected from compromise by the consent decree where they might otherwise have given way to the intensely held preferences of Chinese parents who comprise the single largest parent group in the district. In fact, the School District has gone to court to defend the consent decree from a collateral legal challenge by the Chinese Democratic Club who claim, among other things, that the racial quotas at Lowell High School operate as reverse discrimination against Chinese-American children .[31] In both the Lowell and reconstitution issues, the Board and the Superintendent are protected from having consent-decree policy choices attacked as

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[30] Although the consent decree does not technically require reconstitution, the Superintendents has emphasized that use of the technique is part of his commitment to the NAACP.

[31] See, Brian Ho v. San Francisco Unified School District, Civil Action No. C-94-2418-WHO (1995).

illegitimate when he can turn to the court order and the NAACP for support. In some ways this phenomena represents a trade-off for the School Board which must delegate greater autonomy of action and negotiation to its Superintendent. But this delegation buys the Board and District administrators greater policy stability on issues that may have defied resolution through a more open political process.

Concluding Observations:

This judicially created, and party maintained regime is not viewed as an ideal governing tool by any party -- insofar as it represents critical political trades-offs for all stakeholders. Yet, it will be supported and maintained by the principal stakeholders provided that each calculates that the gains from working within the court-ordered framework will outweigh its costs in both political and economic terms. The School Boards and its administrators will work cooperatively within the court-ordered context, and will surrender some measure of flexibility and ability to be fully responsive to their electorate in exchange for the political stability and additional resources that court involvement offers.

Likewise, minority groups with a stake in the court-ordered regime will acquiesce in the NAACP's privileged role provided that they perceive that they are receiving some voice in the bargaining process and that the benefits that accrue to them from the NAACP's fiduciary representation appear to outweigh whatever influence they might have on policy working in the absence of the consent decree process.

From a policy perspective, this court-constructed, arrangement is seen to shelter public schools from political turbulence and allows for stable policy implementation on behalf of minority interests during a period of high political turbulence for urban school boards and school administrators. This court-sponsored governing regime operates as a substitute for a broad governing consensus about school reform and provides an efficient vehicle (through the concentration of decisionmaking authority) for stable policymaking in

what many politicians and school stakeholders have come to describe as the otherwise ungovernable environment of minority politics in the city. Nevertheless, this derivation from the "normal" political process is not likely to remain an "endless journey" for long. The Supreme court's recent decisions favoring a swifter return of school control to local political leaders have made long-lasting court-ordered regimes more legally tenuous.[32] Furthermore, the more aggressive federal and state role in driving local policy for at-risk youth through systemic reform initiatives portends now to overshadow the influence of court-ordered action on curricular and staff development matters.

[32] In 1992 the Supreme court held that school districts were entitled to be released from court supervision in areas where school officials had met their legal requirements. In such cases, the courts could retain jurisdiction over only those areas of school administration where desegregation objectives had not been meet. Freeman v. Pitts, 503 U.S. 467 (1992). With respect to remedies designed to address student performance adversely affected by past discrimination, the Supreme Court held in 1995 that such remedies should be limited in time and scope. It further held that a School District's efforts should be held to a good faith standard so that School Districts should not be required to show proof that their efforts actually improved minority student outcomes before they could be released from judicial supervision. Missouri v. Jenkins 115 S.Ct. 2038 (1995).

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